

**MEMORANDUM**

December 5, 1997

TO: County Council

FROM: *MF* Michael Faden, Senior Legislative Attorney

SUBJECT: **Introduction:** Bill 45-97, Collective Bargaining - Amendments

Bill 45-97, Collective Bargaining - Amendments, sponsored by Council President Leggett and Councilmembers Berlage, Ewing, and Subin, is scheduled to be introduced on December 9. A public hearing is tentatively scheduled for January 20, 1998, at 1:30 pm.

This bill requires binding arbitration of collective bargaining agreements for County employees; requires the County to bargain with employee representatives before contracting with private parties to provide certain services or assume certain functions; repeals certain provisions governing the role of the County Council in the collective bargaining process; and modifies several other provisions governing collective bargaining with County employees.

This packet contains:

Bill 45-97

Legislative Request Report

Circle #

1

22

Bill No. 45-97  
Concerning: Collective Bargaining -  
amendments  
Revised: 12-3-97 Draft No. 2  
Introduced: December 9, 1997  
Expires: June 9, 1999  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President Leggett and Councilmembers Berlage, Ewing, and Subin

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**AN ACT** to:

- (1) require the Chief Administrative Officer to follow certain procedures and consult with certain employee organizations before the County contracts with a private party to perform certain services or functions, and restrict the County from entering into certain contracts for services;
- (2) include certain employees in a collective bargaining unit;
- (3) modify certain functions of the Labor Relations Administrator;
- (4) modify the process for certifying employee organizations;
- (5) clarify the scope of matters subject to collective bargaining;
- (6) amend the timetable for certain collective bargaining actions;
- (7) require binding arbitration of certain collective bargaining agreements;
- (8) repeal certain provisions governing the role of the County Council in the collective bargaining process; and
- (9) generally amend the law governing collective bargaining for certain County employees.

By adding

Montgomery County Code  
Chapter 11B, Contracts, Procurement Matters, and Public Ethics  
Article XV, Service Contracts  
Sections 11B-65 through 11B-69

By amending

Chapter 33, Personnel and Human Resources  
Sections 33-102, 33-103, 33-106, 33-107, and 33-108

①

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

1        **Sec. 1. Chapter 11B is amended by adding Article XV as follows:**

2                    **ARTICLE XV. SERVICE CONTRACTS.**

3        **11B-65. Scope of Article.**

4            Service contract, as used in this Article, means a procurement contract for  
5        services that will:

6            (a)    be provided to a County government department, office, or agency;

7            (b)    exceed an annual cost of \$50,000; and

8            (c)    duplicate or replace services or functions which are being performed  
9                    by County employees, or which traditionally have been performed by  
10                   government employees.

11        **11B-66. Policy.**

12            The policy of this County is to use County employees to perform all County  
13        services or functions in County-operated facilities, in preference to contracting  
14        with the private sector to perform those services or functions.

15        **11B-67. Approval of service contract.**

16            (a)    A County government department, office, or agency may enter into a  
17                    service contract only if the contract is approved under this Article.

18            (b)    Except as provided in subsection (c), a service contract may be  
19                    entered into only after the Chief Administrative Officer certifies to

20 the County Council and any affected certified collective bargaining  
 21 representative that:

22 (1) the service contract is exempt under Section 11B-68(b); or

23 (2) the service contract complies with Section 11B-68(c).

24 (c) If the County Council authorizes or requires that an independent  
 25 contractor perform certain services for it, a service contract may be  
 26 approved for those services without the certification required by  
 27 subsection (b).

28 **11B-68. Certifications by the Chief Administrative Officer.**

29 (a) The Chief Administrative Officer may certify a service contract to the  
 30 County Council and an affected certified collective bargaining  
 31 representative as provided in this section.

32 (b) The Chief Administrative Officer may certify a service contract as  
 33 exempt from the requirements of this Article if:

34 (1) (A) County employees are not available to perform the  
 35 function or service;

36 (B) that function or service has not been performed by  
 37 County employees; and

- 38                   (C) that function or service has not traditionally been  
 39                               performed by government employees;
- 40           (2) a conflict of interest would result if a County employee were to  
 41                       perform the function or service;
- 42           (3) the nature of the function or service meets the requirement for  
 43                       emergency purchase of temporary functions or services;
- 44           (4) the function or service is incidental to the purchase or lease of  
 45                       personal or real property, such as a service agreement  
 46                       associated with the purchase or rental of computers or office  
 47                       equipment; or
- 48           (5) a clear need exists to obtain an unbiased finding or opinion,  
 49                       such as an expert witness in litigation.
- 50   (c) The Chief Administrative Officer may certify a service contract  
 51               which is not exempt under subsection (b) only if:
- 52           (1) the contract has complied with Section 11B-69; and
- 53           (2) the Chief Administrative Officer finds that:
- 54                       (A) the policy stated in Section 11B-66 does not outweigh  
 55                               the potential economic advantage of entering into the  
 56                               contract;

(B) the contract does not adversely affect the County's  
affirmative action efforts;

(C) the contract includes adequate control mechanisms to  
ensure that the function or service will be performed in  
accordance with the contract; and

(D) the contract complies with all requirements of this  
Article and any regulations adopted under it.

**11B-69. Information regarding proposed non-exempt service contracts.**

Before certifying a service contract that is not exempt under Section 11B-  
67(c) or 11B-68(b), the Chief Administrative Officer must also submit to the  
County Council and each affected certified collective bargaining representative  
the following information:

(a) **Consideration of alternatives.** A demonstration that the affected  
County department or office has taken formal and positive steps to  
consider alternatives to the service contract, including reorganization,  
reevaluation of service, and reevaluation of performance, and has  
consulted with any affected certified collective bargaining  
representative.

(b) **Cost comparison.**

- 76           (1)   Calculations that:
- 77                   (A)   compare the cost of the service contract with the cost of
- 78                           using County employees to perform the service or
- 79                           function; and
- 80                   (B)   show savings to the County, over the duration of the
- 81                           service contract, of at least 20% of the value of the
- 82                           contract or \$200,000.
- 83           (2)   The cost comparison required by this subsection must include:
- 84                   (A)   direct costs, including fringe benefits;
- 85                   (B)   indirect overhead costs, including the proportional share
- 86                           of existing administrative salaries and benefits, rent,
- 87                           equipment costs, utilities, and materials, but only to the
- 88                           extent that those costs are attributed solely to the service
- 89                           or function in question and would not exist if the service
- 90                           or function were not performed by County employees;
- 91                   (C)   any continuing or transitional costs directly associated
- 92                           with contracting for the service or function, including
- 93                           unemployment compensation and the cost of transitional
- 94                           services; and



(D) additional costs of performance of the service or function by County employees, including salaries and benefits of additional staff and the cost of additional space, equipment, and materials needed to perform the service or function.

(c) **Plan of assistance.** A formal proposed plan of assistance for all County employees who will be adversely affected by the service contract, which must include:

- (1) efforts to place affected employees in vacant positions in the same or another unit of government;
- (2) provisions in the service contract, if feasible, for hiring by the contractor of displaced employees; and
- (3) prior notification to affected employees 6 months before each adverse effect will occur.

A final plan of assistance must only be adopted after bargaining with any affected certified collective bargaining representative.

**Sec. 2. Sections 33-102, 33-103, 33-106, 33-107, and 33-108 are amended as**

**follows:**

114 **33-102. Definitions.**

115 The following terms have the meaning indicated when used in this  
116 Article:

117 \* \* \*

118 (4) **"Employee"** means any person who works under the County  
119 government merit system on a continuous full-time, career or part-  
120 time, career basis, except:

121 \* \* \*

122 [(T) Persons in grade 27 or above, whether or not they are  
123 supervisors.]

124 \* \* \*

125 **33-103. Labor Relations Administrator.**

126 (a) There is established the position of Labor Relations Administrator, to  
127 provide for the effective implementation and administration of this  
128 Article concerning selection, certification and decertification  
129 procedures, prohibited practices, and the choice of a mediator/fact-  
130 finder. The Labor Relations Administrator [shall] must exercise the  
131 following powers and perform the following duties and functions:

132 \* \* \*

133 (8) Determine any issue regarding the negotiability of any  
134 collective bargaining proposal.

[(8)] (9) Exercise any other powers and perform any other duties and functions [as may be] specified in this Article.

**33-106 Selection, certification, and decertification procedures.**

(a) The certification or decertification of an employee organization as the representative of a unit for [the purpose of] collective bargaining [shall be initiated in accordance with] must comply with the following procedures:

\* \* \*

(5) If a different employee organization is certified as the result of an election carried out under subsection (b)(8), that organization must be treated in all respects as a successor in interest and party to any collective bargaining agreement that the previous employee organization was a party to.

\* \* \*

(8) If a properly supported and timely filed petition to decertify an existing certified employee organization, and a properly supported and timely filed petition to certify another employee organization, are filed within the same time period under subsection (a)(3) or (a)(4), one election must be held to determine which organization, if any, the employees in the unit

desire to represent them. The election ballot must contain, as  
choices to be made by the voter, the names of the petitioning  
and certified employee organizations, and a choice that the  
employee does not desire to be represented by any of the  
named employee organizations. All other applicable  
requirements and procedures for the election must be followed.

\* \* \*

**33-107. Collective bargaining.**

(a) **Duty to bargain; matters subject to bargaining.** Upon certification  
of an employee organization, the employer and the certified  
representative have the duty to bargain collectively with respect to the  
following subjects:

\* \* \*

(7) [Amelioration of the] The effect on employees [when the  
exercise] of the employer's exercise of rights listed in  
subsection (b) [causes a loss of existing jobs in the unit].

(b) **Employer rights.** This Article and any agreement made under it  
[shall] must not impair the right and responsibility of the employer to  
[perform the following]:

\* \* \*

(17) Create, alter, combine, contract out, or abolish any job classification, department, operation, unit, or other division or service, [provided that no contracting of work which will displace employees may be undertaken by the employer] but the employer must not take any such action unless [ninety (90)] 90 days [prior to the signing of the contract] before any such action, or [such other] another date of notice [as] agreed by the parties, written notice has been given to the certified representative. The employer must also certify in writing to the certified representative and the County Council that any proposed contracting of work completely conforms to the requirements of Chapter 11B, Article XV.

**33-108. Bargaining, impasse, fact-finding, and legislative procedures.**

- (a) Collective bargaining [shall] must begin no later than November 1 before the beginning of a fiscal year for which there is no agreement between the employer and the certified representative, and [shall] must be finished on or before [January] February 15. [The resolution of a bargaining impasse or fact-finding shall be finished by February 1.]

- 194 (b) Any provision for automatic renewal or extension of a collective  
 195 bargaining agreement is void. An agreement is not valid if it extends  
 196 for less than one year or for more than 3 years. All agreements  
 197 [become effective] take effect July 1 and end June 30.
- 198 (c) A collective bargaining agreement [becomes effective] takes effect  
 199 only after ratification by the employer and [by] the certified  
 200 representative. The certified representative may [provide] adopt its  
 201 own [rules for] ratification procedures.
- 202 (d) Before November 10 of any year in which the employer and the  
 203 certified representative bargain collectively, the Labor Relations  
 204 Administrator [shall] must appoint a mediator/[fact-finder] arbitrator,  
 205 who may be a person recommended [to her] by both parties. The  
 206 mediator/[fact-finder] arbitrator [shall] must be available [during the  
 207 period] from January 2 to [February 1] June 30. Fees and expenses of  
 208 the mediator/[fact-finder] arbitrator [shall] must be shared equally by  
 209 the employer and the certified representative.
- 210 (e) (1) During the course of collective bargaining, either party may  
 211 declare an impasse and request the services of the  
 212 mediator/[fact-finder] arbitrator, or the parties may jointly

213 request [his] those services before [declaration of] an impasse  
214 is declared. If the parties do not reach an agreement by  
215 [January] February 15, an impasse exists. Any issue regarding  
216 the negotiability of any bargaining proposal must be referred to  
217 the Labor Relations Administrator for an expedited  
218 determination.

219 (2) This dispute [shall] must be submitted to the mediator/[fact-  
220 finder] arbitrator whenever an impasse has been reached, or  
221 [before that] as provided in subsection (e)(1). The  
222 mediator/[fact-finder] arbitrator [shall] must engage in  
223 mediation by bringing the parties together voluntarily under  
224 such favorable circumstances as will [tend to bring about the]  
225 encourage settlement of the dispute.

226 (3) If [and when] the mediator/[fact-finder] arbitrator finds, in [his]  
227 the mediator/arbitrator's sole discretion, that the parties are at a  
228 bona fide impasse, [he shall implement the following fact-  
229 finding process:] or as of February 15 when an impasse is  
230 automatically reached, whichever occurs earlier, the dispute  
231 must be submitted to binding arbitration.

[(a.) He shall require the parties to submit jointly a memorandum of all items previously agreed upon, and separate memoranda of their proposals on all items not previously agreed upon.]

(f)(1) If binding arbitration of the parties' dispute is invoked, the mediator/arbitrator must require each party to submit a final offer, which must consist either of a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the mediator/arbitrator directs. If only complete package proposals are required, the mediator/arbitrator must require the parties to submit jointly a memorandum of all items previously agreed on. The final offer submitted by each party must separately identify economic and non-economic proposals. Economic proposals must include salary and wages, pension and other welfare benefits, such as health insurance. The mediator/arbitrator must decide any issue regarding whether a particular proposal is economic or non-economic.

[(b.)] (2) [He] The mediator/arbitrator may require the parties to submit oral or written evidence [or make oral or written] and



251 arguments in support of their proposals. [He] The  
 252 mediator/arbitrator may hold a hearing for this purpose at a  
 253 time, date, and place selected by [him] the mediator/arbitrator.  
 254 This hearing [shall] must not be open to the public.

255 [(c.)] (3) On or before [February] March 1, the mediator/[fact-finder]  
 256 arbitrator [shall] must issue a report of [his] findings of fact  
 257 and recommendations on those matters still in dispute between  
 258 the parties. The report [shall] must be submitted to the parties  
 259 but [shall] must not be made public at this time.

260 [(d.)] (4) In making [findings of fact and recommendations] this  
 261 determination, the mediator/[fact-finder] arbitrator may [take  
 262 into account] consider only the following factors:

263 [(i)] (A) Past collective bargaining agreements between the  
 264 parties, including the past bargaining history that led to  
 265 the agreements, or the pre-collective bargaining history  
 266 of employee wages, hours, benefits, and working  
 267 conditions.

268 [(ii)] (B) Comparison of wages, hours, benefits, and conditions of  
 269 employment of similar employees of other public

270 employers in the Washington Metropolitan Area and in  
271 Maryland.

272 [(iii)](C) Comparison of wages, hours, benefits, and conditions of  
273 employment of other Montgomery County personnel.

274 [(iv)] (D) Wages, benefits, hours, and other working conditions of  
275 similar employees of private employers in Montgomery  
276 County.

277 [(v)] (E) The interest and welfare of the public.

278 [(vi)] (F) The ability of the employer to finance economic  
279 adjustments, and the effect of the adjustments upon the  
280 normal standard of public services provided by the  
281 employer.

282 [(f) After receiving the report of the mediator/fact-finder, the parties shall  
283 meet again to bargain. If 10 days after the parties receive the report  
284 they have not reached full agreement, or if either party does not  
285 accept, in whole or in part, the recommendations of the mediator-fact-  
286 finder, the report of the mediator-fact-finder, with recommendations  
287 on agreed items deleted, shall be made public by sending it to the  
288 Council. The mediator/fact-finder shall also send the Council the

289 joint memorandum of items agreed upon, up-dated with any items  
290 later agreed upon. The parties shall also send to the Council separate  
291 memoranda stating their positions on matters still in dispute.]

292 [(g) The budget that the employer submits to the Council shall include the  
293 items that have been agreed to, as well as the employer's position on  
294 matters still in dispute. Any agreed or disputed term or condition  
295 submitted to the Council that requires an appropriation of funds, or  
296 the enactment, repeal, or modification of any County law or  
297 regulation, or which has or may have a present or future fiscal impact,  
298 may be accepted or rejected in whole or in part by the Council. Such  
299 terms or conditions shall be identified to the Council by either or both  
300 parties. The employer shall make a good faith effort to have the  
301 Council take action to implement any term or condition to which the  
302 parties have agreed.]

303 [(h) The Council may hold a public hearing to enable the parties and the  
304 public to testify on the agreement and the recommendations for  
305 resolving bargaining disputes.]

306 [(i) On or before May 1, the Council shall indicate by resolution its  
307 intention to appropriate funds for or otherwise implement the items

308 that have been agreed to or its intention not to do so, and shall state  
309 its reasons for any intent to reject any items of the kind specified in  
310 subsection (g) that have been agreed to. The Council shall also  
311 indicate by resolution its position on disputed matters which could  
312 require an appropriation of funds or enactment, repeal, or  
313 modification of any County law or regulation, or which have present  
314 or future fiscal impact.]

315 [(j) Then the Council shall designate a representative to meet with the  
316 parties and present the Council's views in the parties' further  
317 negotiation on disputed matters and/or agreed upon matters that the  
318 Council has indicated its intention to reject. The results of the  
319 negotiation, whether a complete or a partial agreement, shall be  
320 submitted to the Council on or before May 10. Any agreement shall  
321 provide for automatic reduction or elimination of wage and/or  
322 benefits adjustments if:

- 323 (1) The Council does not take action necessary to implement the  
324 agreement, or a part of it; or  
325 (2) Sufficient funds are not appropriated for any fiscal year in  
326 which the agreement is in effect.



